

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

BLUE ROCK INVESTMENTS, <i>et</i>	:	
<i>al.</i> ,	:	
Plaintiffs,	:	Case No. 3:17-cv-409
v.	:	JUDGE WALTER H. RICE
CITY OF XENIA, OHIO, <i>et al.</i> ,	:	
Defendants.	:	

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ORDER SUSTAINING BADGER CONSTRUCTION'S RULE 56(d)  
MOTION FILED IN RESPONSE TO COMPLETE GENERAL  
CONSTRUCTION COMPANY'S MOTION FOR SUMMARY  
JUDGMENT (DOC. #123); STAYING DEADLINE TO RESPOND TO  
MOTION FOR SUMMARY JUDGMENT; CONFERENCE CALL SET

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On June 15, 2020, Third Party Defendant, Complete General Construction Company, filed a Motion for Summary Judgment, Doc. #122. In response, Third Party Plaintiff, Badger Construction Company, Inc., filed a Rule 56(d) motion, Doc. #123, asking for additional time to conduct discovery, including taking several depositions, before responding to the motion for summary judgment. Fed. R. Civ. P. 56(d) provides:

**(d) When Facts Are Unavailable to the Nonmovant.** If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

Fed. R. Civ. P. 56(d).

Badger's counsel, Carmen Sarge, has submitted an Affidavit in support of the motion. He states that, although the parties have exchanged basic written discovery, no depositions have been taken. He further indicates that a mediation was held in February of 2020, and that the parties have reached a settlement contingent on approval by the Probate Court and the Estate of Sam Boymel.<sup>1</sup> That process has been delayed by COVID-19. If approval is not granted, then Badger needs to take depositions of certain key witnesses concerning Complete General Construction's activities at the demolition site prior to responding to the summary judgment motion. Doc. #123-1.

Pursuant to Fed. R. Civ. P. 56(d), the Court SUSTAINS Badger Construction's Rule 56(d) motion, Doc. #123, and will stay the deadline for Badger to respond to Complete General Construction Company's Motion for Summary Judgment.

The Court notes that trial is currently set for December 7, 2020. The Court neglected to issue a scheduling order following the last conference call held on December 5, 2019. In light of the pending settlement and COVID-19, the dates suggested in the parties' Joint Rule 26(f) Report, filed on August 1, 2019, Doc. #102, may no longer be viable. Accordingly, the Court will hold a conference call

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<sup>1</sup> It is not clear whether this is a global settlement or whether it is limited to Plaintiffs' claims against Badger.

on July 22, 2020, at 4:00 PM, to discuss the status of the pending  
settlement and adjust deadlines if necessary.

Date: July 8, 2020



(tp - per Judge Rice authorization after his review)

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WALTER H. RICE  
UNITED STATES DISTRICT JUDGE